

**THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**UNITED STATES OF AMERICA,
Plaintiff/Appellee,**

v.

APPEAL NO. 24-4178

**ETHAN D. DELAUDER,
Defendant/Appellant.**

**UNOPPOSED MOTION TO SUSPEND
BRIEFING AND PLACE CASE IN ABEYANCE**

Counsel for the Appellant, Ethan D. Delauder, respectfully moves this Court pursuant to Federal Rules of Appellate Procedure 12(d), to suspend the current briefing order and to place this case in abeyance for the decision in *United States v. Nutter*, No.22-4541, which has been briefed and supplemented by parties and is anticipated to be scheduled for argument at the Court's convenience:

1. The issue in this appeal is whether Mr. Delauder's conviction under 18 U.S.C. § 922(g)(9) violates the Second Amendment. In particular, this appeal will require the Court to decide whether an as-applied challenge to that statue is available, and if so, the test for evaluating such a challenge. That same constitutional issue is pending before this Court in a number of other cases, including *Nutter*. The decision from this Court in *Nutter* will likely provide much-needed guidance for cases such as this one.

2. The interests of efficiency and docket control would be served by rescinding the current briefing order and placing these other appeals into abeyance. In contrast, not placing these appeals in abeyance would require our office to file multiple duplicative briefs and require the government to respond and our office to reply, with a likely round of supplemental briefing to follow once this Court issues a decision (or decisions) setting out the proper legal standards. Moreover, due to the number of appeals that our office has pending, in addition to our other duties, would result in multiple requests for extensions of briefing deadlines.

3. I believe that *Nutter* will provide this Court with an opportunity to resolve issues that were left open by the Supreme Court's decision in *United States v. Rahimi*, 144 S. Ct. 1889 (2024), and *United States v. Canda*, 103 F.4th 257 (4th Cir. 2024).

4. In accordance with Fourth Circuit Local Rule 27(a), undersigned counsel has informed counsel for the United States of the intended filing of this motion. The government has stated that it has no objection to placing this appeal in abeyance for *Nutter*.

For these reasons, counsel requests that the Court rescind the current briefing order and place this appeal into abeyance pending the decisions in *United States v. Nutter*, No. 22-4541, or another case if the Court deems it more appropriate.

Respectfully submitted,

Ethan D. Delauder
By Counsel

s/ Hilary Godwin

Hilary Godwin
WV State Bar No.: 12280
Assistant Federal Public Defender
Office of the Federal Public Defender
230 West Pike Street, Suite 360
Clarksburg, West Virginia 26301
Tel.: 304-622-3823
Email: hilary_godwin@fd.org

CERTIFICATION OF COMPLIANCE

1. This motion has been prepared using Microsoft Word for Office 365 software, Times New Roman Font, 14-point proportional type size.
2. The body of this motion contains 374 words, excluding case caption, title, and signature block is less than the 5,200-word limit.

I understand that a material misrepresentation can result in the Court's striking the brief and imposing sanctions. If the Court so requests, I will provide an electronic version of the brief and/or a copy of the word or line print-out.

s/ Hilary Godwin

Hilary Godwin

WV State Bar No.: 12280

Assistant Federal Public Defender

Office of the Federal Public Defender

230 West Pike Street, Suite 360

Clarksburg, West Virginia 26301

Tel.: 304-622-3823

Email: hilary_godwin@fd.org

CERTIFICATE OF SERVICE

I certify that on September 18, 2024, filed the foregoing *Unopposed Motion to Suspend Briefing and Place Case in Abeyance* with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the CM/ECF system, which will send notification of such filing to the following CM/ECF user:

Stephen Donald Warner, Assistant U. S. Attorney
Direct: 304-636-1739
Email: steve.warner@usdoj.gov
OFFICE OF THE UNITED STATES ATTORNEY
P. O. Box 190
Elkins, WV 26241-0000

s/ Hilary L. Godwin

Hilary L. Godwin (WV Bar # 12280)
Assistant Federal Public Defender
Federal Public Defender Office
230 West Pike Street; Suite 360
Clarksburg, West Virginia 26301
Tel. (304) 622-3823
E-Mail. Hilary_Godwin@fd.org